



Testimony of W. Wyatt Bosworth
Assistant Counsel, CBIA
Before the Committee on Government Administration & Elections
Hartford, Connecticut
6 March 2023

Testifying in Opposition to:

HB 6826: AAC Liability for False and Fraudulent Claims

My name is Wyatt Bosworth and I am assistant counsel for CBIA, the Connecticut Business & Industry Association. CBIA is Connecticut's largest business organization, with thousands of member companies, small and large, representing a diverse range of industries from across the state. Ninety-three percent of our member companies are small businesses, with less than 100 employees. Thank you for the opportunity to testify in **opposition to HB 6826: AAC Liability for False and Fraudulent Claims.**

CBIA appreciates the Attorney General and the Committee for modifying this year's bill to exempt tax matters. Exempting tax matters will give businesses certainty that Connecticut tax laws will be consistently and equitably administered by the Department of Revenue Services (DRS) instead of private parties filing claims in Superior Court. Exempting tax matters also assures businesses that their tax filings and sensitive proprietary information will not become public when a complaint is filed under the FCA which would effectively strip a business of its rights under strict confidentiality statutes governing DRS audits. Existing Connecticut tax provisions adequately deal with assessment, audit, investigation, enforcement, and appeals of business tax filings, and we urge the Committee to keep in place the above exemption. Finally, exempting tax matters will prevent Connecticut from becoming a national outlier, as both the federal False Claims Act and the overwhelming majority of other state's with false claims acts explicitly exempt tax matters .

As to the remainder of the bill, CBIA is certainly supportive of efforts to prevent abuse and fraud in government contracting. Our primary objection, however, is that allowing private litigants to bring suits against any employer doing business with the state could unfairly expose even innocent employers to costly and burdensome litigation. We are particularly concerned with the low standard of proof and severe damages and penalties.

As to the former, the preponderance of the evidence standard applied to the FCA is significantly lower than the civil fraud standard of clear and convincing evidence. As to the latter, the bill contemplates treble damages and the costs of investigation and prosecution. Combined with the FCA's whistleblower provisions that provide for up to a 25% share in any recovery, plus costs and recovery fees, the FCA as proposed creates fertile ground for frivolous complaints and abuse. The committee should, at a minimum, reject treble damages and attorneys fees and costs for private litigants. If the Committee is not inclined to do so, in the spirit of fairness, we would suggest allowing businesses and individuals that successfully defend themselves against FCA suits to recover defense costs, including attorneys fees and damages for reputational harm.

At a time when employers — specifically small businesses — are struggling with an historic workforce shortage, inflation and an economy slowly rebounding from the COVID-19 pandemic, HB 6826 has the potential to put businesses at economic peril through FCA abuses. Again, CBIA applauds the committee and the Attorney General for at least recognizing this concern for abuse and uncertainty in the context of business tax filings as applied by previous iterations of FCA legislation. The business community urges the Committee to keep in place the business tax exemption should the bill move forward, but oppose HB 6826 for the aforementioned reasons. Thank you for your time and consideration.